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1 SUPERIOR COURT OF NEW JERSEY

2 LAW DIVISION - BERGEN COUNTY

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IN RE: :CASE NO:

5 NUVARING LITIGATION :284 (MT)

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8 February 7, 2014

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10 Transcript of Settlement Statement, held

11 at Bergen County Courthouse, 10 South Main Street,

12 Room 359, Hackensack, New Jersey, on the above date,

13 beginning at approximately 9:30 a.m., before

14 KIMBERLY A. CAHILL, a Federally Approved Registered

15 Merit Reporter, Certified Court Reporter, and Notary

16 Public for the State of New Jersey.

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19 BEFORE: HON. BRIAN R. MARTINOTTI, JSC

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2 THE COURT: Good morning, everyone.

3 MR. WINTERS: Good morning, Your

4 Honor.

5 MS. GEIST: Good morning, Your Honor.

6 MR. STERN: Good morning, Your Honor.

7 THE COURT: You can all be seated.

8 (Pause.)

9 THE COURT: Hello. We're on the

10 record. Good morning, counsel. We just got on the

11 record in the courtroom.

12 Counsel in court, your appearances

13 for the record?

14 MR. STERN: Bruce Stern of the law  
15 firm of Stark & Stark.

16 MR. BLAU: Steven Blau for plaintiff.

17 MR. RHEINGOLD: Paul Rheingold for  
18 the plaintiff.

19 MR. LoPALO: Chris LoPalo for the  
20 plaintiffs.

21 MS. MILNER: Dori Milner for the  
22 plaintiffs.

23 MR. SPIZER: Gregory Spizer,  
24 plaintiffs.

25 MS. GEIST: Melissa Geist from Reed

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1 Smith for the defendants, Your Honor. Good morning.

2 MR. WINTERS: Daniel Winters, Reed

3 Smith, on behalf of the defendants.

4 MR. HERTEN: May it please the Court,  
5 Thomas Herten, Archer & Greiner, on behalf of the  
6 defendants.

7 THE COURT: Counsel on the telephone,  
8 your appearances?

9 MR. SHKOLNIK: Hunter Shkolnik on  
10 behalf of plaintiffs, Your Honor. Good morning.

11 MS. LEONARD: Shelly Leonard on  
12 behalf of plaintiffs.

13 THE COURT: Okay.

14 MR. YOO: Good morning, Your Honor.

15 Thomas Yoo, the defense.

16 MR. BALL: Dan Ball for the defense.

17 MR. STRAUSS: Steve Strauss for the

18 defendants.

19 MS. KRAFT: And, Your Honor, Kristine

20 Kraft for the plaintiffs.

21 MR. MARVIN: Douglas Martin for

22 Merck.

23 MS. PISTILLI: And Emily Pistilli,

24 Your Honor.

25 THE COURT: Is that it? Okay.

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1 This is in the matter of NuvaRing

2 Case No. 284 (MT) designated for centralized

3 management by the Supreme Court on March 10th,

4 2009 -- do we have another appearance? Okay.

5 I would just like to take this

6 opportunity to inform the parties that an agreement

7 in principal has been reached for the settlement of

8 the NuvaRing Litigation nationwide. This agreement

9 is subject to certain contingencies that I will

10 discuss in a minute.

11 A Master Settlement Agreement has

12 been signed by the defendants and by the lead  
13 plaintiffs' counsel, whom I and Judge Rodney Sippel  
14 of the United States District Court, presiding over  
15 the NuvaRing MDL, have previously selected to engage  
16 in mediation on behalf of the plaintiffs.

17           The Master Settlement Agreement is  
18 available online and its terms govern the  
19 settlement, not by description of the case here  
20 today.

21           Under the proposed agreement, the  
22 company will pay \$100 million to resolve the claims,  
23 provided that various contingencies and requirements  
24 are met, including an overall 95 percent  
25 participation rate and additional participation

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1 thresholds for specific types of claims.

2           This is a nationwide settlement that  
3 is available to all qualified plaintiffs in cases  
4 currently on file in New Jersey proceedings, the MDL  
5 and other federal or state court, as well as all  
6 qualifying claimants who have not yet filed a  
7 lawsuit. If the participation thresholds are not  
8 met, the company can walk away from the settlement  
9 and continue defending the cases in the litigation.

10           This settlement was achieved after

11 extensive negotiations by the defendants and the  
12 negotiating plaintiffs' counsel, Roger Denton and  
13 Kristine Kraft of the Schlichter, Bogard & Denton  
14 firm, and Hunter Shkolnik of Napoli Bern.

15           The mediations were presided over by  
16 this Court, as well as Judge Wayne Andersen, a  
17 retired federal judge, who was appointed by Judge  
18 Sippel as mediator in the MDL proceedings. I want  
19 to thank Judges Sippel and Andersen for their hard  
20 work, cooperation, and collaboration.

21           Just as an aside, for those of you  
22 who appear before this Court, you know I am a  
23 proponent of state and federal cooperation in MDLs  
24 and MCLs. I have had the opportunity to work with  
25 many state and federal jurists throughout the

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1 country with MCLs filed in Bergen County. No one  
2 has been more responsive and accommodating than  
3 Judge Sippel.

4           It has been my honor and privilege to  
5 have served with Judge Sippel and to work closely  
6 with him in this litigation. There were open lines  
7 and communication and coordination throughout our  
8 handling of procedural and substantive components of  
9 this matter.

10 Judge Sippel and I were able to  
11 maintain the delicate balance of cooperation while  
12 giving due deference to the integrity of our  
13 respective jurisdiction's substantive and procedural  
14 authority and precedent. I firmly believe that this  
15 coordination was a significant factor in bringing  
16 about this settlement.

17 Judge Sippel and I specifically  
18 ordered counsel not to discuss mediation with any  
19 parties during the pendency of negotiations, and so  
20 that is the reason why you did not hear about this  
21 settlement until today, though the Court is mindful  
22 that there have been certain news reports beginning  
23 last night regarding this settlement.

24 I can tell you that counsel on both  
25 sides worked very hard over many months to achieve

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1 this resolution. It is the belief of this Court,  
2 and I think Judges Sippel and Andersen will agree,  
3 that the settlement is a fair resolution of this  
4 litigation.

5 All counsel should read the Master  
6 Settlement Agreement and do so promptly as there are  
7 deadlines that must be met in order to participate  
8 in the settlement, and participation thresholds must

9 be satisfied in order for the agreement to become  
10 effective. This is a lump-sum settlement of \$100  
11 million that covers the entire litigation  
12 nationwide.

13 The responses to the census orders  
14 issued by this Court and the MDL Court included  
15 approximately 3,800 filed and unfiled NuvaRing  
16 claims alleging different types of injuries.

17 In order to qualify for a portion of  
18 the settlement sum, each participant must meet the  
19 requirements in the Master Settlement Agreement and  
20 abide by the forms appended to the agreement.

21 The claims will be processed by a  
22 third-party claims administrator, BrownGreer, on  
23 whose website you can find a copy of the Master  
24 Settlement Agreement. The determination of  
25 individual claim values under the settlement program

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1 will be made by a committee of plaintiffs' counsel  
2 pursuant to the established criteria.

3 Among other conditions, the  
4 settlement requires a 95 percent participation by  
5 eligible plaintiffs and claimants. In other words,  
6 if at least 95 percent of eligible participants do  
7 not opt into the settlement, the settlement fails

8 and no one receives any portion of the settlement

9 sum.

10 So in order to make this work for the  
11 collective benefit, I hope everyone will recommend  
12 participation in the settlement program.

13 This is the only settlement in the  
14 NuvaRing Litigation and it is intended to be the  
15 final resolution of the litigation nationwide. The  
16 settlement comes after five years of extensive and  
17 hard-fought litigation in this Court and the MDL.

18 Discovery has been exhausted. Key  
19 evidence has been presented to the Court. Legal  
20 rulings on dispositive motions have been made, and  
21 the timing and terms of the settlement are  
22 appropriate.

23 In addition to the Master Settlement  
24 Agreement, I encourage everyone to read the case  
25 management order as issued by the Court today. I

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1 believe Judge Sippel will issue similar orders in  
2 the MDL. These case management orders include  
3 orders that will apply to any case that does not  
4 join the settlement program and sets forth certain  
5 prima facie requirements, including preservation  
6 obligations and expert reports, that plaintiffs will

7 need to meet in order to go forward if they choose  
8 to seek to litigate their case in lieu of the  
9 settlement program. Those requirements will also  
10 apply to any new cases filed today and in the future  
11 that are not part of the settlement program.

12 If after reading the Master  
13 Settlement Agreement you have any questions about  
14 the settlement program, please direct those  
15 questions to the contact names listed in the Master  
16 Settlement Agreement or the claims administrator.

17 Should any further orders be  
18 necessary from the Court, the negotiating counsel  
19 and defendants' counsel will contact the Court for  
20 scheduling as appropriate.

21 I will be entering right now Case  
22 Management Order No. 34, which regards the  
23 settlement agreement and deadlines, Case Management  
24 Order No. 35, negotiating plaintiff committee  
25 NuvaRing settlement agreement, Case Management Order

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1 No. 36, the preservation of records and prima facie  
2 evidence of usage, injury and causation requirements  
3 for pending cases not participating in the NuvaRing  
4 Resolution Program and newly filed or transferred  
5 cases, and Case Management Order No. 37 regarding

6 procedures for notices to third parties regarding  
7 records preservation. Those orders will be entered  
8 momentarily, stamped, docketed, and posted on our  
9 website.

10 That concludes this court proceeding.

11 Thank you.

12 MR. STERN: Thank you.

13 MR. WINTERS: Thank you, Your Honor.

14 MS. GEIST: Thank you, Your Honor.

15 MR. HERTEN: Thank you, Your Honor.

16 (Settlement Statement ended at

17 approximately 9:40 a.m.)

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1 CERTIFICATE

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3 I, KIMBERLY A. CAHILL, a Notary

4 Public and Certified Court Reporter of the State of

5 New Jersey, do hereby certify that the foregoing is  
6 a verbatim transcript of the statement as taken  
7 stenographically by and before me at the time, place  
8 and on the date hereinbefore set forth, to the best  
9 of my ability.

10 I DO FURTHER CERTIFY that I am  
11 neither a relative nor employee nor attorney nor  
12 counsel of any of the parties to this action, and  
13 that I am neither a relative nor employee of such  
14 attorney or counsel, and that I am not financially  
15 interested in the action.

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19 KIMBERLY A. CAHILL, CCR, RMR

CCR Number: 30XI00188400

20 Dated: February 7, 2014

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1           LAWYER'S NOTES

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